

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

No. 05 10416 MEL

MUSKET RESEARCH ASSOCIATES, INC.,
Plaintiff,
v.
OVION, INC., WILLIAM S. TREMULIS,
and JEFFREY P. CALLISTER,
Defendants.

OVION, INC.,
Counterclaimant,
v.
MUSKET RESEARCH ASSOCIATES, INC.,
DAVID B. MUSKET, and
SUE ANN LATTERMAN,
Counterdefendants.

**THE MRA PARTIES' MOTION TO DISMISS OVION'S
COUNTERCLAIMS FOR LACK OF PROSECUTION**

Counterdefendants MRA, David Musket, and Sue Ann Latterman (the “MRA Parties”), hereby move pursuant to Rule 41(b) and (c) of the Federal Rules of Civil Procedure to dismiss counterclaimant Ovion, Inc.’s (“Ovion”) counterclaims. As grounds for this motion, the MRA Parties state that Ovion has failed to diligently prosecute these claims. For well over a year, Ovion has not conducted any discovery, filed any motions, or made any other substantial effort to advance its counterclaims. In further support of this motion, the MRA parties refer to the accompanying memorandum of law.

Respectfully submitted,

MUSKET RESEARCH ASSOCIATES, INC.
DAVID B. MUSKET and
SUE ANN LATTERMANN

By their attorneys,

/s/ Brooks A. Ames
Brooks A. Ames (BBO #641192)
DLA PIPER US LLP
33 Arch Street – 26th Floor
Boston, MA 02110-1447
(617) 406-6045 (*telephone*)
(617) 406-6145 (*fax*)

Arthur S. Beeman (admitted *pro hac vice*)
Pamela K. Fulmer (admitted *pro hac vice*)
DLA PIPER US LLP
153 Townsend Street, Suite 800
San Francisco, CA 94107
(415) 836-2541 (*telephone*)
(415) 836-2501 (*fax*)

Dated: November 8, 2007

LR 7.1 CERTIFICATE

I, Brooks A. Ames, certify that counsel for the parties have conferred and attempted in good faith to resolve or narrow the issues raised by this motion, including during a September 20, 2006 telephone conference arranged by the Court.

/s/ Brooks A. Ames